

**RULES  
OF  
DEPARTMENT OF REVENUE  
INCOME TAX DIVISION**

**CHAPTER 560-7-7  
TAXES**

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**560-7-7-.03 Corporations: Allocation and Apportionment of  
Income.**

(1) **What constitutes doing business.** A corporation will be considered to be doing business within this state if it performs acts or consummates transactions within this state which result in financial profit or gain, or if it engages within this state in any activities or transactions for the purpose of financial profit or gain. A corporation will be considered to be engaged in an activity in this state whose agent, salesman, or other representative in whatever capacity, engages in solicitation, demonstration, taking of orders, collection activities, or any other activity for the purpose of financial profit or gain. A corporation will be considered to be owning property in this state, doing business in this state, or deriving income from sources within this state whenever the corporation is a partner, whether limited or general, in a partnership which owns property in this state, does business in this state, or derives income from sources within this state. A corporation will be considered to be owning property in this state, doing business in this state, or deriving income from sources within this state whenever the corporation is a member of a limited liability company or similar nontaxable entity, not treated as a corporation for federal income tax purposes, which owns property in this state, does business in this state, or derives income from

sources within this state.

(2) **Allocation and apportionment of income.** When a corporation's entire net income is derived from owning property within this state, doing business within this state, or deriving income from sources within this state, the entire net income shall be taxable by this state. When a corporation's business income is derived in part from property owned or business done within this state and in part from property owned or business done outside this state, the tax shall be imposed only on that portion of the business income which is reasonably attributable to the property owned and business done within this state. To arrive at net income subject to apportionment, there shall be excluded income subject to allocation as provided in paragraph (3) of this regulation.

(3) **Allocation of income.** O.C.G.A. § 48-7-31(c) applies only to income from property held solely for investment. All expenses connected with earning such investment income, including interest on money borrowed to pay for such property, ad valorem and other taxes on such property, and all other expenses connected with holding and owning such property shall be deducted from the gross investment income. The net investment income is not subject to apportionment.

(a) **Real property investment income.** If the investment property is real estate located within the state, the entire net investment income from such real property shall be allocated to Georgia. If such real estate is situated outside the state, the entire net investment income therefrom shall be allocated outside Georgia.

(b) **Intangible property investment income.** If the investment property is intangible, and the corporation is a domestic corporation, or a domesticated foreign corporation, or an undomesticated foreign corporation having its principal office in Georgia, the entire net investment income from such intangible

property shall be allocated to Georgia; or if such intangible property was acquired as a result of business done or property owned in Georgia, the entire net investment income therefrom shall be allocated to Georgia.

**(c) Allocation of gain or loss on sale of investment property.**

Net gain or loss from the sale or other disposition of investment property which is not held, owned or used in connection with the trade or business of the corporation, and not held for sale in the regular course of the trade or business of the corporation, shall be allocated. Such gain or loss shall be allocated to Georgia if the investment property is real estate situated in Georgia, or tangible personal property located in Georgia, or intangible property the net investment income from which is allocated to Georgia hereunder. Otherwise, such gain or loss shall be allocated outside the state.

**(4) Apportionment of income; tangible personal property.**

Any corporation whose net business income is principally derived from the manufacture, production, sale, or lease of tangible personal property shall be taxed upon that portion of its net income attributable to this state, determined by use of a three-factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor. The method of apportioning income using ratios related to property, payroll, and gross receipts shall hereinafter be referred to as the three-factor formula. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

**(a) Property factor.**

1. General rule. The property factor of the three-factor formula shall include all real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the taxpayer's trade or business. The term "real and tangible personal property" includes, but is not limited to, land,

buildings, machinery, stocks of goods, equipment, and other real and tangible personal property, but does not include coin or currency. Property used in connection with the production of income subject to allocation shall be excluded from the property factor. Property used both in the regular course of taxpayer's trade or business and in the production of income subject to allocation shall be included in the factor only to the extent that the property is used in the regular course of the taxpayer's trade or business. The method used to determine that portion of the value to be included in the factor will depend upon the facts of each case. The property factor shall include the average value of property includable in the factor.

2. Property used for the production of business income. Property shall be included in the property factor if it is actually used, or is available for or capable of being used, during the tax period in the regular course of the trade or business of the taxpayer. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant that is temporarily idle, or raw material reserves not currently being processed, are included in the factor. Property or equipment under construction during the tax period (except inventoriable goods in process) shall be excluded from the factor until such property is actually used in the regular course of the trade or business of the taxpayer. If the property is partially used in the regular course of the trade or business of the taxpayer while under construction, the value of the property to the extent used shall be included in the property factor. Property used in the regular course of the trade or business of the taxpayer shall remain in the property factor until its permanent withdrawal is established by an identifiable event.

3. Consistency in reporting. When filing returns with this state, if the taxpayer departs from or modifies the manner of valuing property, or from excluding or including property in the property factor, used in returns for prior years, the taxpayer shall disclose on

the return for the current year the nature and extent of the modification.

4. Denominator. The denominator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used during the tax period in the regular course of the taxpayer's trade or business.

5. Numerator. The numerator of the property factor shall include the average value of the real and tangible personal property owned or rented by the taxpayer and used in this state during the tax period in the regular course of the taxpayer's trade or business. Property in transit between locations of the taxpayer to which it belongs shall be considered to be at the destination for purposes of the property factor. Property in transit between a buyer and seller which is included by the taxpayer in the denominator of the taxpayer's property factor in accordance with its regular accounting practices shall be included in the numerator according to the state of destination. The value of mobile or movable property such as construction equipment, trucks, or leased electronic equipment which is located within and outside this state during the tax period shall be determined, for purposes of the numerator of the factor, on the basis of the total time located within the state during the tax period, or another reasonable method which reflects the use of the property in this state as approved and determined by the Commissioner.

6. Valuation of owned property.

(i) Original cost; defined. Property owned by the taxpayer shall be valued at its original cost. As a general rule, "original cost" is deemed to be the original basis of the property for federal income tax purposes (prior to any federal adjustments) at the time of acquisition by the taxpayer and adjusted by subsequent capital additions or improvements thereto and partial dispositions thereof, by reason of sale, exchange, abandonment, etc. If the original cost

of the property cannot be ascertained, the property is included in the factor at its fair market value as of the date of acquisition by the taxpayer. However, capitalized intangible drilling and development costs shall be included in the property factor whether or not they have been expensed for either federal or state tax purposes. Depletable property shall be valued at its original cost less any depletion taken for federal tax purposes.

(ii) Inventory. Inventory of stock of goods shall be included in the factor in accordance with the valuation method used for federal income tax purposes.

(iii) Gift or inheritance. Property acquired by gift or inheritance shall be included in the factor at its basis for determining depreciation for federal income tax purposes.

#### 7. Valuation of rented property.

(i) General rule. Property rented by the taxpayer is valued at eight times the net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for such property, less the aggregate annual subrental rates paid by subtenants of the taxpayer. Subrents are not deducted when they are from activities which constitute the taxpayer's regular trade or business.

(ii) Annual rental rate; defined. "Annual rental rate" is the amount paid as rental for property for a twelve-month period (i.e., the amount of the annual rent). Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the "annual rental rate" for the tax period. However, where a taxpayer has rented property for a term of twelve or more months and the current tax period covers a period of less than twelve months (due, for example, to a reorganization or change of accounting period), the rent paid for the short tax period shall be annualized. If the rental term is for less than twelve months, the rent shall not be annualized beyond its term. Rent

shall not be annualized because of the uncertain duration when the rental term is on a month-to-month basis.

(iii) Annual rent. “Annual rent” is the actual sum of money or other consideration payable, directly or indirectly, by the taxpayer for the use of the property and includes:

(I) Any amount payable for the use of real or tangible personal property, or any part thereof, whether designated as a fixed sum of money, or as a percentage of sales, profits, or otherwise; and

(II) Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs, or any other items which are required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges for utilities, janitorial services, etc. If a payment includes rent and other unsegregated charges, the amount of rent shall be determined by taking into consideration the relative values of the rent and other associated items.

(iv) Royalties. Annual rent does not include royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property which constitutes a sharing of current or future production of natural resources from such property, irrespective of the method of payment or how such consideration may be characterized, whether as a royalty, advance royalty, rental, or otherwise.

(v) Leasehold improvements. For purposes of the property factor, leasehold improvements shall be treated as property owned by the taxpayer regardless of whether the taxpayer is entitled to remove the improvements or the improvements revert to the lessor upon expiration of the lease. Hence, the original cost of leasehold improvements shall be included in the factor.

(vi) Where no rent is charged. If property owned by others is used by the taxpayer at no charge or rented by the taxpayer for a nominal rate, the net annual rental rate for such property shall be determined on the basis of the fair market rental rate for such property.

8. Averaging property values. As a general rule, the average value of property owned by the taxpayer shall be determined by averaging the values at the beginning and end of the tax period. However, the Commissioner may require or allow averaging by monthly values if such method of averaging is required to properly reflect the average value of the taxpayer's property for the tax period.

**(b) Payroll factor.**

1. General rule. The payroll factor of the three-factor formula shall include the total amount paid by the taxpayer in the regular course of the taxpayer's trade or business for compensation during the tax period.

2. Method of Accounting. The total amount of compensation is determined based upon the taxpayer's accounting method. If the taxpayer has adopted the accrual method of accounting, all compensation properly accrued shall be deemed to have been paid. Notwithstanding the taxpayer's method of accounting, at the election of the taxpayer, compensation paid to employees may be included in the payroll factor by use of the cash method if the taxpayer is required to report such compensation using that method for unemployment compensation purposes. The compensation of any employee for activities in connection with the production of income subject to allocation shall be excluded from the factor.

3. Compensation. The term "compensation" means wages, salaries, commissions, and any other form of remuneration paid directly or indirectly to employees for personal services. Payments



made to an independent contractor or any other person not properly classifiable as an employee are excluded. Only amounts paid directly or indirectly to employees are included in the payroll factor. Amounts considered paid include the value of board, rent, housing, lodging, and other benefits or services furnished to employees by the taxpayer in return for personal services, provided that such amounts constitute income to the recipient under the Federal Internal Revenue Code.

4. Employee. The term “employee” means any officer of a corporation or any individual who, under the Internal Revenue Service rules applicable in determining the employer-employee relationship, has the status of an employee. How compensation is paid by the employer to an employee for personal services, whether directly, indirectly, or through a third party, and what the employee is called, whether partner, agent, or independent contractor, is immaterial. The existence of an actual employer-employee relationship is the fact that determines inclusion of compensation in the payroll ratio. Whether the employer-employee relationship exists or not will be determined in doubtful cases upon an examination of the particular facts of each case.

5. Modification of compensation. When filing returns with this state, if the taxpayer departs from or modifies the treatment of compensation paid that was used in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

6. Denominator. The denominator of the payroll factor is the total compensation paid everywhere during the tax period.

7. Numerator. The numerator of the payroll factor is the total amount of compensation paid by the taxpayer in this State during the tax period.

8. Compensation paid in this state. Compensation is paid in this

state if any one of the following tests are met:

(i) The employee's service is performed entirely within this state; or

(ii) The employee's service is performed both within and outside this state and the service performed outside this state is incidental to the employee's service within this state. The word "incidental" means any service which is temporary or transitory in nature, or which is rendered in connection with an isolated transaction; or

(iii) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is in this state; or

(iv) Some of the service is performed in this state and the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed but the employee's residence is in this state.

In each of the above four tests, the employee's total compensation is determined to be Georgia compensation and is included in the numerator of the payroll factor. The term "base of operations" means the place of more or less permanent nature from which the employee starts his work and to which he customarily returns in order to receive instructions from the taxpayer or communications from his customers or other persons or to replenish stock or other materials, repair equipment, or perform any other functions necessary to the exercise of trade or business at some other point or points. The term "place from which the service is directed or controlled" refers to the place from which the power to direct or control is exercised by the taxpayer.

**(c) Gross receipts factor.**

1. General rule. O.C.G.A. § 48-7-31 provides that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period, and the denominator of which is the total gross receipts from business done everywhere during the tax period. Except as otherwise provided in subparagraph (4)(c), the term “gross receipts” as used in subparagraph (4)(c) means all gross receipts derived by the taxpayer from products shipped or delivered to customers in the regular course of the taxpayer’s trade or business.

2. Gross receipts; manufacturing and resale. In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, all gross receipts from the sale of such goods or products, or other property of a kind which would properly be included in inventory of the taxpayer if on hand at the close of the tax period, and which are held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer’s trade or business, are included in the gross receipts factor. Gross receipts for this purpose means gross sales, less returns and allowances, and includes all service charges or carrying charges incidental to such sales. Federal and state excise taxes, including sales taxes, shall be included as part of such receipts if such taxes are passed on to the buyer or included as part of the selling price of the product.

3. Where a taxpayer’s gross receipts are also derived from activities described in paragraph (5), gross receipts shall also include the gross receipts from the activities described in paragraph (5) and shall be attributed to Georgia based upon subparagraph (5)(c).

4. Lease of tangible personal property. Gross receipts shall include receipts which are received from the lease of tangible personal property where such receipts are from activities which

constitute the taxpayer's regular trade or business. The receipts shall be considered Georgia gross receipts if the property is located in this state. The gross receipts of mobile or movable property such as construction equipment, trucks, or leased electronic equipment which is located within and outside this state during the tax period shall be determined for purposes of the numerator of the factor on the basis of the total time within the state during the tax period or another reasonable method which reflects the use of the property in this state as approved and determined by the Commissioner.

5. Gross receipts; fixed-fee contracts. In the case of cost plus fixed-fee contracts, such as the operation of a government-owned plant for a cost plus a fixed fee, gross receipts shall include only the fixed fee charged for the operation of the plant.

6. Modification of gross receipts. In filing returns with Georgia, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the gross receipts factor used in returns for prior years, the taxpayer shall disclose on the return for the current year the nature and extent of the modification.

7. Denominator. The denominator of the gross receipts factor shall include the total gross receipts as defined or otherwise provided in subparagraph (4)(c).

8. Numerator. The numerator of the gross receipts factor shall include the gross receipts attributable to this state and derived by the taxpayer from products shipped or delivered to customers in this State in the regular course of the taxpayer's trade or business or that are otherwise attributable to Georgia as provided in subparagraph (4)(c).

9. Sales of tangible personal property in this state.

(i) Gross receipts from the sales of tangible personal property are attributable to this state if the property is delivered or shipped

to a customer within this state regardless of the f.o.b. point or other conditions of sale. However, when property is picked up by an out-of-state customer at the taxpayer's place of business in Georgia for transport out of the state, the gross receipts from such sales are not attributable to this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is immaterial.

(ii) Property shall be deemed to be delivered or shipped to a customer within this state if the recipient is located in this state, even though the property is ordered from outside this state. Additionally, when property is picked up by a Georgia customer at the taxpayer's out-of-state place of business for transport to this state, the gross receipts from such sales are attributable to this state. The actual place of transfer and the manner by which the property arrives at its eventual destination is immaterial.

(iii) Property is delivered or shipped to a customer within this State if the shipment terminates in this state, even though the property is subsequently transferred by the purchaser to another state.

(iv) The term "customer within this state" shall include the ultimate recipient of the property if the taxpayer in this state, at the designation of the customer, delivers to or has the property shipped to the ultimate recipient within this state.

(v) When property being shipped by a seller from the state of origin to a consignee in another state is diverted while en route to a purchaser in this state, gross receipts from the sales are attributable to this state.

**(d) Georgia apportionment ratio.**

1. The three apportionment factors for tax years beginning before January 1, 2006, determined separately above, shall be

weighted 25% to the property factor, 25% to the payroll factor, and 50% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be  $33\frac{1}{3}\%$  and the weighted percentage for the gross receipts factor will be  $66\frac{2}{3}\%$ . If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

2. The three apportionment factors for tax years beginning on or after January 1, 2006 and before January 1, 2007, determined separately above, shall be weighted 10% to the property factor, 10% to the payroll factor, and 80% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 11.11% and the weighted percentage for the gross receipts factor will be 88.89%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

3. The three apportionment factors for tax years beginning on or after January 1, 2007 and before January 1, 2008, determined separately above, shall be weighted 5% to the property factor, 5% to the payroll factor, and 90% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 5.26% and the weighted percentage for the gross receipts factor will be 94.74%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the

property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

4. For tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(e) **Apportionment of income: business joint ventures and business partnerships.** A corporation that is involved in a business joint venture, is a member of a limited liability company or similar nontaxable entity not treated as a corporation for federal income tax purposes, or is a partner in a business partnership, must include its pro rata share of the entity's property, payroll, and gross receipts in its own apportionment formula. In determining its income, the corporation includes its share of the entity's income before the entity apportions and allocates its income.

(5) **Apportionment of income; where not principally from tangible personal property.** Except as otherwise provided in Chapter 7 of Title 48 of the O.C.G.A., any corporation whose net business income is derived principally from business other than the manufacture, production, or sale of tangible personal property, shall be taxed upon that portion of its net income attributable to this state, determined by use of a three-factor apportionment formula. The three factors in the apportionment formula are the property factor, the payroll factor, and the gross receipts factor. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

(a) **Property factor.** The property factor shall be computed in accordance with the rules which are outlined under subparagraph (4)(a).

(b) **Payroll factor.** The payroll factor shall be computed in

accordance with the rules which are outlined under subparagraph (4)(b).

**(c) Gross receipts factor.**

1. General rule. O.C.G.A. § 48-7-31 provides that the gross receipts factor is a fraction, the numerator of which is the total gross receipts from business done within this state during the tax period, and the denominator of which is the total gross receipts from business done everywhere during the tax period. Gross receipts are in this state if the receipts are derived from customers within this state or if the receipts are otherwise attributable to this state's marketplace. This gross receipts factor is designed to measure the marketplace for the taxpayer's goods and services.

2. For purposes of subparagraph (5)(c), the term "gross receipts" means all gross receipts received from activities which constitute the taxpayer's regular trade or business. This shall not include:

i. Receipts from the sale of assets unless such receipts are from activities which constitute the taxpayer's regular trade or business;

ii. Apportionable interest and dividends unless the taxpayer's regular trade or business involves the loaning and/or investing of money;

iii. Gross receipts from the management of working capital;

iv. Receipts from income that is allocable;

v. Apportionable rents or royalties unless such receipts are from activities which constitute the taxpayer's regular trade or business; and

vi. Other similar income;



3. “Customers within this state” as used within this Regulation shall mean:

(i) A customer that is engaged in a trade or business and maintains a regular place of business within this state; or

(ii) A customer that is not engaged in a trade or business whose billing address is in this state.

4. “Regular place of business” as used within this Regulation means an office, factory, warehouse, or other business location at which the customer conducts business in a regular and systematic manner and which is continuously maintained, occupied and used by employees, agents or representatives of the customer.

5. “Billing address” as used within this Regulation means the location indicated in the books and records of the taxpayer as the address of record where any notice, statement and/or bill relating to a customer’s account is mailed.

6. The following shall be used to determine the amount that is attributable to this state’s marketplace for purposes of subparagraph (5)(c):

(i) Computer software. Gross receipts from the sale, lease, development, or license of custom computer software shall be treated according to subparagraph (5)(c)6.(ii). The gross receipts from the sale, lease, development, or license of prewritten computer software shall be treated pursuant to subparagraph (4)(c). Modification to existing prewritten computer software to meet the customer’s needs is custom computer software only to the extent of the modification. The manner in which the computer software is delivered, whether it be in a tangible medium or electronically, is not considered in determining whether the computer software is custom computer software or prewritten computer software.

Additionally, documentation related to the software shall be treated in the same manner as the computer software and shall not be considered in determining whether the computer software is custom computer software or prewritten computer software. For purposes of this regulation the following definitions shall apply:

(I) The term “computer software” means any computer data, program or routine, or any set of one or more programs or routines, which are used or intended for use to cause one or more computers, pieces of computer-related peripheral equipment, automatic processing equipment, or any combination thereof, to perform a task or set of tasks. Without limiting the generality of the foregoing, the term “computer software” shall include operating programs, application programs, system programs, and subdivisions (such as assemblers, compilers, generators, and utility programs).

(II) The term “custom computer software” means computer software, including custom updates, which is designed and developed by the author to the specifications of a specific purchaser. Any subsequent sale of custom software shall be deemed prewritten computer software.

(III) The term “prewritten computer software,” also known as “canned computer software,” means computer software that is designed, prepared, or held for general distribution or repeated use, or software programs developed in-house and subsequently held or offered for repeated sale, lease, license, or use.

(IV) The term “application program” means a set of statements or instructions that when incorporated in a machine-usable medium is capable of causing a machine or device having information processing capabilities to indicate, perform, or achieve a particular function, task, or result for the end user. Application programs include any other computer software that does not qualify under subparagraph (V) or (VI).

(V) The term “operating program” means a set of statements or instructions that when incorporated into a machine or device having information processing capabilities is an interface between the computer hardware and the application program or system program.

(VI) The term “system program” means a set of statements or instructions that interacts with the operating program that is developed, licensed, and intended to build, test, manage, or maintain application programs.

(ii) Services. Except as otherwise provided, all gross receipts from the performance of services are included in the numerator of the apportionment factor if the recipient of the service receives all of the benefit of the service in Georgia. If the recipient of the service receives some of the benefit of the service in Georgia, the gross receipts are included in the numerator of the apportionment factor in proportion to the extent the recipient receives benefit of the service in Georgia. The following noninclusive examples illustrate the application of this subparagraph:

(I) A real estate development firm from State A is developing a tract of land in Georgia. The real estate development firm from State A engages a surveying company from State B to survey the tract of land in Georgia. The survey work is completed and the plats are drawn in Georgia. All of the gross receipts from this survey work are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(II) A corporation headquartered in State A is building an office complex in Georgia. The corporation from State A contracts with an engineering firm from State B to oversee construction of the buildings on the site. The engineering firm performs some of their service in Georgia at the building site and additional service in

State B. All of the gross receipts from the engineering service are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(III) A corporation from State A contracts with a computer software company from State B to develop and install custom computer software for a business office located in Georgia of the corporation from State A. The software will only be used by the business office in Georgia. The software development occurs in State B. All of the gross receipts from the software development and installation are attributable to Georgia and are included in the numerator of the apportionment factor because the recipient of the service received all of the benefit of the service in Georgia.

(IV) A corporation from State A contracts with a computer software company from State B to develop and install custom computer software for the corporation from State A. The software will be used by the corporation from State A in a business office in Georgia and in a business office in State A. The software development occurs in State B. The gross receipts from the software development and installation are included in the numerator of the apportionment factor in proportion to the extent the software is used in Georgia.

(V) A corporation located in Georgia performs direct mail activities for a customer located in State A. The direct mail activities include the preparation and mailing of materials to households located throughout the United States. The corporation located in Georgia performed some activities related to the direct mail contract in State A. One percent of the direct mailings were sent to addresses within Georgia. One percent of the gross receipts related to this direct mail contract are thus attributable to Georgia and included in the numerator of the apportionment factor because the recipient of the service received 1 percent of the benefit of the service in Georgia.

(VI) A corporation located in State A, who otherwise does business in Georgia, performs direct mail activities for a customer located in State B. The direct mail activities include the preparation and mailing of materials to households throughout the United States. The corporation located in State A printed and mailed the direct mail materials to households on a mailing list prepared by the corporation in State A. Five percent of the direct mailings were sent to addresses within Georgia. Five percent of the gross receipts related to this direct mail contract are thus attributable to Georgia and included in the numerator of the apportionment factor.

(VII) A company which owns apartments in Georgia and State A contracts with a pest control corporation for pest control activities. One contract is entered into which covers 100 apartment units in Georgia and 400 apartment units in State A. Twenty percent (100/500) of the gross receipts from the pest control contract are attributable to Georgia and are included in the numerator of the apportionment factor as 20 percent of the apartment units are located in Georgia and in the absence of more accurate records, it is therefore presumed that the number of apartment units is the best measure of the extent to which the recipient of the service received benefit of the service in Georgia.

(iii) Rental or lease of real property. Gross receipts shall include receipts which are received from the rental or lease of real property where such receipts are from activities which constitute the taxpayer's regular trade or business. Such receipts shall be attributable to this state's marketplace if the property is located in this state.

(iv) Brokerage Services. Gross receipts derived from securities brokerages services attributable to this State are determined by multiplying the total dollar amount of gross receipts from securities brokerage services by a fraction, the numerator of which

is the gross receipts from securities brokerage services from customers within this state, and the denominator of which is the gross receipts from securities brokerage services from all customers. Gross receipts from securities brokerage services include commissions on transactions, the spread earned on principal transactions in which the broker buys or sells from its account, total margin interest paid on behalf of brokerage accounts owned by the broker's customers, and fees and receipts of all kinds from the underwriting of securities. For example, a broker executes a transaction on a stock exchange for a customer within this state, selling 100 shares of Corporation X for \$1,000. The broker earns a \$50 commission on the transaction. Only the commission is included in the numerator and denominator of the broker's gross receipts factor. If gross receipts from brokerage services can be associated with a particular customer, but it is impractical to associate the gross receipts with the address of the customer, then the address of the customer shall be presumed to be the address of the branch office that generates transactions for the customer.

(v) **Services to Regulated Investment Companies.** Gross receipts from services that are derived directly or indirectly from the sale of management, distribution, administration, or securities brokerages services to, or on behalf of, a regulated investment company or its beneficial owners (including gross receipts derived directly or indirectly from trustees, sponsors, or participants of employee benefit plans that have accounts in a regulated investment company), shall be attributable to this state to the extent that the shareholders of the regulated investment company are domiciled within this state. For purposes of this subparagraph, "domicile" means the shareholder's mailing address on the records of the regulated investment company. If the regulated investment company or the person providing management services to the regulated investment company has actual knowledge that the shareholder's primary residence or principal place of business is different than the shareholder's mailing address, then the

shareholder's primary residence or principal place of business is the shareholder's domicile. A separate computation shall be made with respect to the gross receipts derived from each regulated investment company. The total amount of gross receipts attributable to this State shall be equal to the total gross receipts received by each regulated investment company multiplied by a fraction:

(I) The numerator of which is the average of the sum of the beginning-of-year and end-of-year number of shares owned by the regulated investment company shareholders who are domiciled in this state; and

(II) The denominator of which is the average of the sum of the beginning-of-year and end-of-year number of shares owned by all shareholders.

(III) For purposes of the fraction, the year shall be the taxable year of the regulated investment company that ends with or within the taxable year of the taxpayer.

(vi) Print Media. A person in the business of publishing, selling, licensing or distributing newspapers, magazines, periodicals, trade journals or other printed material shall source their receipts pursuant to this subparagraph.

(I) For purposes of subparagraph (5)(c)6.(vi) the following definitions shall apply:

I. The term "Print or printed material" includes, without limitation, the physical embodiment or printed version of any thought or expression including, without limitation, a play, story, article, column or other literary, commercial, educational, artistic or other written or printed work. The determination of whether an item is or consists of print or printed material shall be made without regard to its content. Printed material may take the form of

a book, newspaper, magazine, periodical, trade journal or any other form of printed matter and may be contained on any medium or property.

II. The terms “Purchaser” and “Subscriber” mean the individual, residence, business or other outlet which is the ultimate or final recipient of the print or printed material. Neither of such terms shall mean or include a wholesaler or other distributor of print or printed material.

(II) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to, the following:

I. Gross receipts derived from the sale of tangible personal property, including printed materials shall be treated pursuant to subparagraph (4)(c).

II. Gross receipts derived from advertising or the sale, rental or other use of the taxpayer’s customer lists or any portion thereof shall be attributed to this state as determined by the taxpayer’s “circulation factor” during the tax period. The circulation factor shall be determined by the taxpayer for each individual publication of printed material containing advertising and shall be equal to the ratio that the taxpayer’s in-state circulation to purchasers and subscribers of its printed material bears to its total circulation to purchasers and subscribers everywhere. The circulation factor for an individual publication shall be determined by reference to the rating statistics as reflected in such sources as the Audit Bureau of Circulations or other comparable sources, provided that the source selected is consistently used from year to year for such purpose. If none of the foregoing sources are available, or, if available, none is in form or content sufficient for such purposes, then the circulation factor shall be determined from the taxpayer’s books and records.



(vii) Broadcasting Film or Radio Programing. A person in the business of broadcasting film or radio programming, whether through the public airwaves, by cable, direct or indirect satellite transmission or any other means of communication, either through a network (including owned and affiliated stations) or through an affiliated, unaffiliated or independent television or radio broadcasting station, shall source their receipts pursuant to this subparagraph.

(I) For purposes of subparagraph (5)(c)6.(vii) the following definitions shall apply:

I. The term “Film” or “Film programming” means any and all performances, events or productions telecast on television, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of video tape, disc or any other type of format or medium. Each episode of a series of films produced for television shall constitute a separate “film” notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

II. The term “Radio” or “Radio programming” means any and all performances, events or productions broadcast on radio, including but not limited to news, sporting events, plays, stories or other literary, commercial, educational or artistic works, through the use of an audio tape, disc or any other format or medium. Each episode of a series of radio programming produced for radio broadcast shall constitute a separate “radio programming” notwithstanding that the series relates to the same principal subject and is produced during one or more tax periods.

III. The term “Release” or “In release” means the placing of film or radio programming into service. A film or radio program is placed into service when it is first broadcast to the primary audience for which the program was created. Thus, for example, a

film is placed in service when it is first publicly telecast for entertainment, educational, commercial, artistic or other purpose. Each episode of a television or radio series is placed in service when it is first broadcast. A program is not placed in service merely because it is completed and therefore in a condition or state of readiness and availability for broadcast or, merely because it is previewed to prospective sponsors or purchasers.

IV. The term “Rent” shall include license fees or other payments or consideration provided in exchange for the broadcast or other use of television or radio programming.

V. The term “Subscriber” as it relates to a cable television system is the individual residence or other outlet which is the ultimate recipient of the transmission.

VI. The term “Telecast” or “Broadcast” (sometimes used interchangeably with respect to television) means the transmission of television or radio programming, respectively, by an electronic or other signal conducted by radio waves or microwaves or by wires, lines, coaxial cables, wave guides, fiber optics, satellite transmissions directly or indirectly to viewers and listeners or by any other means of communications.

(II) The numerator of the sales factor shall include all gross receipts of the taxpayer from sources within this state, including, but not limited to the following:

I. Gross receipts, including advertising revenue, from television film or radio programming in release to or by a television or radio station (independent or unaffiliated) or network of stations for broadcast shall be attributed to this state in the ratio (hereafter “audience factor”) that the audience for such station (or owned and affiliated stations in the case of networks) located in this state bears to the total audience for such station (or owned and affiliated stations in the case of networks). The audience factor for

television film or radio programming shall be determined by the ratio that the taxpayer's in-state viewing (listening) audience bears to its total viewing (listening) audience. Such audience factor shall be determined either by reference to the books and records of the taxpayer or by reference to published rating statistics, provided the method used by the taxpayer is consistently used from year to year for such purpose and fairly represents the taxpayer's activity in the state.

II. Gross receipts from film programming in release to or by a cable television system shall be attributed to this state in the ratio (hereafter "audience factor") that the subscribers for such cable television system located in this state bears to the total subscribers of such cable television system. If the number of subscribers cannot be accurately determined from the books and records maintained by the taxpayer, such audience factor ratio shall be determined on the basis of the applicable year's subscription statistics located in published surveys, provided that the source selected is consistently used from year to year for that purpose.

III. Receipts from the sale, rental, licensing or other disposition of audio or video cassettes, discs, or similar medium intended for home viewing or listening shall be included in the sales factor as provided in subparagraph (4)(c).

(viii) Royalties. Gross receipts shall include royalty or other receipts for the use of, or for the privilege of using, intangible property including patents, know-how, formulas, designs, processes, patterns, copyrights, trade names, service names, franchises, licenses, contracts, customer lists, or similar items where such receipts are from activities which constitute the taxpayer's regular trade or business. Except as otherwise provided in this regulation, such receipts must be attributed to the state in which the property is used by the purchaser. If the property is used in more than one state, then the royalties or other income must be apportioned to Georgia pro rata according to the portion of use in

Georgia. Intangible property is used in Georgia if the purchaser uses the intangible property or the rights therein in Georgia.

(ix) The taxpayer must expend a reasonable amount of effort to obtain the information to determine the amount that is attributable to this state's marketplace. If the information is not available, the taxpayer may use another reasonable method to determine the amount attributable to this state's marketplace. Such other method is subject to review, adjustment, or change by the Commissioner.

7. Where a taxpayer's gross receipts are also derived from activities described in paragraph (4), gross receipts shall also include the gross receipts from the activities described in paragraph (4) and shall be attributed to Georgia based upon subparagraph (4)(c).

**(d) Georgia apportionment ratio.**

1. The three apportionment factors for tax years beginning before January 1, 2006, determined separately above, shall be weighted 25% to the property factor, 25% to the payroll factor, and 50% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 33-1/3% and the weighted percentage for the gross receipts factor will be 66-2/3%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

2. The three apportionment factors for tax years beginning on or after January 1, 2006 and before January 1, 2007, determined separately above, shall be weighted 10% to the property factor, 10% to the payroll factor, and 80% to the gross receipts factor.

The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 11.11% and the weighted percentage for the gross receipts factor will be 88.89%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

3. The three apportionment factors for tax years beginning on or after January 1, 2007 and before January 1, 2008, determined separately above, shall be weighted 5% to the property factor, 5% to the payroll factor, and 90% to the gross receipts factor. The Georgia apportionment ratio is then computed by adding the weighted factors. If the denominator for either the property factor or the payroll factor is zero, then the weighted percentage for the other will be 5.26% and the weighted percentage for the gross receipts factor will be 94.74%. If the denominator for the gross receipts factor is zero, then the weighted percentage for the property and payroll factors will be 50% each. If the denominators for any two factors are zero, then the weighted percentage for the remaining factor will be 100%.

4. For tax years beginning on or after January 1, 2008 the Georgia apportionment ratio shall be computed by applying only the gross receipts factor.

**(e) Special rules: in general.**

1. This subparagraph provides for a departure from the standard allocation and apportionment provisions for corporations whose income is derived principally from business other than the manufacture, production, sale, or lease of tangible personal property. The departure rules provide that if the allocation and apportionment provisions do not fairly represent the extent of the

taxpayer's business activity in this state, the taxpayer may petition the Commissioner for, or the Commissioner may by regulation require, with respect to all or any part of the taxpayer's business activity, if reasonable:

- (i) Separate accounting;
- (ii) The exclusion of any one or more of the factors;
- (iii) The inclusion of one or more additional factors that will fairly represent the taxpayer's business activity within this state; or
- (iv) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

2. This subparagraph permits a departure from the standard allocation and apportionment provisions only in limited and specific cases. It may be invoked:

- (i) Only in those cases where unusual fact patterns occur that are unique, nonrecurring, and which will produce incongruous results based upon standard allocation and apportionment provisions; and
- (ii) Only when the evidence that the proposed allocation and apportionment method would more clearly reflect the income attributable to the trade or business within Georgia is so clear, direct, convincing, and weighty that the Commissioner comes to a clear conviction without hesitancy as to the validity of the taxpayer's proposed method.

3. In order to depart from the standard allocation and apportionment provisions, a corporation must petition the Commissioner and receive permission to do so prior to filing a return. The taxpayer must file the petition two and one-half months before the due date of the return (including extensions).

Permission will be granted for one year only unless otherwise specified by the Commissioner.

4. The taxpayer shall have the burden of establishing, by clear and cogent evidence, that the standard allocation and apportionment provisions do not fairly represent the extent of the taxpayer's business within and outside the state.

**(f) Special rules: business joint ventures and business partnerships.** A corporation which is involved in a business joint venture, is a member of a limited liability company or similar nontaxable entity not treated as a corporation for federal income tax purposes, or is a partner in a business partnership, must include its pro rata share of the entity's property, payroll and gross receipts in its own apportionment formula. In determining its income, the corporation includes its share of the entity's income before the entity apportions and allocates its income.

**(g) Special rules: petroleum pipeline companies.** Where the net business income of the corporation is derived principally from the interstate transportation of crude oil or refined petroleum products as a common carrier, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the following three-factor formula. However, for tax years beginning on or after January 1, 2008, the Georgia apportionment ratio shall be computed by applying only the gross receipts factor computed as provided below in subparagraph (5)(g)3. For purposes of subparagraph (5)(g), the term "barrel miles" is defined as the movement of one barrel of crude oil or one barrel of refined petroleum product for a distance of one mile.

1. Property factor. The property factor shall be computed in accordance with the rules outlined under subparagraph (5)(a).

2. Payroll factor. The payroll factor shall be computed in

accordance with the rules outlined under subparagraph (5)(b) except the numerator of the payroll factor shall be determined by multiplying the total amount of compensation paid by the taxpayer everywhere during the tax period by a fraction, the numerator of which is the barrel miles in this state during the tax year, and the denominator of which is the total barrel miles everywhere during the tax year.

3. Gross receipts factor. The gross receipts factor shall be computed in accordance with the rules which are outlined under subparagraph (5)(c) except that the numerator of the gross receipts factor shall be determined by multiplying the total gross receipts of the taxpayer from business done everywhere by a fraction, the numerator of which is the barrel miles in this state during the tax year, and the denominator of which is the total barrel miles everywhere during the tax year.

4. Georgia apportionment ratio. The apportionment ratio shall be computed as provided in subparagraph (5)(d).

(h) **Special rules: Motor Carriers.** Where the net business income of the motor carrier is derived principally from the transportation of freight and passengers for hire, the portion of the net income therefrom attributable to property owned or business done within this state shall be taken to be the portion arrived at by application of the gross receipts factor. The gross receipts factor shall be computed in accordance with the rules which are outlined under subparagraph (5)(c) except that the numerator of the gross receipts factor shall be determined by multiplying the total gross receipts of the taxpayer from business done everywhere by a fraction, the numerator of which is the vehicle miles in this state during the tax year, and the denominator of which is the total vehicle miles everywhere during the tax year. For purposes of this subparagraph, the term “vehicle miles” means the mileage traveled by a carrier with cargo or passengers or on a scheduled route.



(6) **Effective date.** The principles set forth in this regulation will apply to taxable years beginning on or after January 1, 2006. Taxable years beginning before January 1, 2006 will be governed by the regulations of Chapter 560-7 as they existed prior to January 1, 2006, in the same manner as if the amendments thereto set forth in this regulation had not been promulgated.

Authority: O.C.G.A. §§ 48-2-12 and 48-7-31.